ARMY CIVIL SERVICE UNION v. CHACKO & ORS.

[F.C. (Barakbah C.J. (Malaya), Wylie C.J. (Borneo) and Tan Ah Tah F.J.) February 22, 1965]

[Singapore — Federal Court Civil Appeal No. 51 of 1964]

Trade Union — Striking off members for non payment of levy — Levy imposed by executive council without prior secret ballot of members — Meaning of "member" — Whether action of executive council ultra vires.

The plaintiffs were some of the members of the Army Civil Service Union who were struck off the register of membership in accordance with rule 27 of the Rules and Regulations of the union for failing to pay the levy imposed on them by the executive council of the union acting under rule 23(a). They applied to court for an order that the executive council had no power to impose a levy upon the members of the union without a prior secret ballot of the members and that the levy imposed was wrongful, *ultra vires* and void and consequently the expulsion was *ultra vires* and void. Kulasekaram J. in the court below held in favour of the plaintiffs ([1964] M.L.J. 403) and on appeal by the union it was contended that the learned judge erred in law in holding that (i) by rule 23(a) it was obligatory on the executive council to take a secret ballot as laid down in rule 19(d) before imposing a levy on members of the union and (ii) the secret ballot referred to in rule 23(a) was a ballot of all the members of the union and not a ballot of the members of its executive council only.

Held: (1) the learned trial judge was right in holding that the taking of a secret ballot was a condition precedent before the imposition of a levy;

(2) the word "members" in rule 23(a) refers to members of the union not to the members of the executive council and voting by secret ballot under rule 19 means voting by members of the union unless otherwise stated.

FEDERAL COURT.

David Marshall for the appellant.

L. A. J. Smith for the respondents.

Cur. Adv. Vult.

Barakbah C.J. (Malaya): The plaintiffs were some of the members of the Army Civil Service Union (hereinafter called the union) who were struck off the register of membership in accordance with rule 27 of the Rules and Regulations of the Union for failing to pay the levy imposed on them by the executive council of the union acting under the provisions of rule 23(a) of the union. They filed an application by originating summons to the high court against the union for an order:—

(1) that on a proper construction of rules 23(a) and 27(a) and other rules relevant to the interpretation and construction of the said rules the executive council of 1962 have no power to impose a levy upon the members of the defendant union without a prior secret ballot.

(2) that the levy imposed by Army Civil Services Union News Bulletin Vol. 5 dated October 1962 was wrongful, *ultra vires* and void.

(3) that to expel members for non-payment or refusal to pay was *ultra vires* and void.

It was heard by Kulasekaram J. who decided in favour of the plaintiffs. The defendants have now appealed against this decision.

There were two grounds of appeal viz:

1. The learned judge erred in law

(a) in holding that by rule 23(a) of the rules and Regulations of the appellant it is obligatory on the executive council of the appellant to take a secret ballot as laid down in rule 19(d) before the said executive council could impose a levy on members of the union;

(b) in failing to give any adequate consideration to the specific provisions of the said rule 23(a) for the said executive council to hold a secret ballot "if they consider it necessary."

2. The learned judge erred in law in holding that the secret ballot referred to in the said rule 23(a) was a ballot of all the members of the appellant and not a ballot of the members of its executive council only.

I shall deal with grounds 1(a) and (b) together. Rule 23(a) reads as follows:—

"The executive council may, by a two third majority votes *after secret ballot of members as laid down in rule 19(d)* if they consider it necessary, impose a levy upon all members of the union and all members shall be required to pay such levy. The levies shall be collected by the branch treasurers and forwarded to the HQ union."

This rule refers to rule 19(d) which states "Voting *shall be by secret ballot* in the following cases:— (d) In the case of dissolution, and any other matter affecting the members of the union generally."

Counsel for the appellants submitted that the executive council could impose a levy upon all members of the union even without taking a secret ballot because of the clause "if they consider it necessary" in rule 23(a), *supra*. It was therefore discretionary, not obligatory on the part of the executive council to take a secret ballot. It seems to me that as rule 23(a) expressly mentioned rule 19(d), then the taking of a secret ballot by the executive council is obligatory. I am in agreement with the learned judge when he said

"On a proper construction of this sub-rule it would appear that the executive council of the union may impose a levy on all the members of the union but before so doing it is obligatory on them to take a secret ballot of the members as laid down in rule 19 sub-rule (d).

The taking of the secret ballot is a condition precedent before the imposition of a levy."

With regard to the second ground, the learned counsel in his submission stated that according to rule 23(a), it should be a secret ballot of the members of executive council only, not of all the members of the union. If one reads rule 23(b) which is as follows:

"A branch committee may, if they consider it necessary and with the consent of the executive council and by secret ballot of members of that branch, impose a levy upon all members of the branch and all members of the branch shall be required to pay such levy,"

one finds that it states distinctly the words "by

secret ballot of members of that branch" whereas in rule 23(a) it merely says "after secret ballot of members". On reading both the two sub-rules of rule 23, in my opinion the true interpretation is that the word "members" in rule 23(a) can only refer to members of the union, not of the executive council, otherwise it would have said so as in rule 23(b). I am further fortified in my opinion by reference to rule 19(b) which states:

"Voting shall be by secret ballot in the following case:—

(b) when the funds of this union exceeding $500 are involved in any one transaction."

and rule 15(11)(b) which says:

"Any amount involving an expenditure of more than $500 and not exceeding $5,000 shall require the sanction of the executive council."

It is clear that the secret ballot in rule 19(b) means the secret ballot of the members of the union and all that is required of the executive council is their sanction under rule 15(11)(b). My opinion also finds support in rule 30(a) where it says:

"The union shall not be dissolved, except with the consent of five-sixths of the membership of the union obtained by means of a secret ballot vote as laid down in rule 19(d)."

and it is my view that the voting by secret ballot under rule 19 means voting by members of the union unless otherwise stated.

If the appellant's contention is correct it means that the eleven words would have to be struck out of rule 23(a) as meaningless. This is against all canons of construction.

In my opinion the learned judge has not erred in coming to the decision which he did and for myself I would therefore dismiss the appeal with costs.

Wylie C.J. (Borneo): I agree with the conclusion of the Chief Justice, Malaya, that the more reasonable interpretation of rule 23(a) is that it requires a ballot to be taken of all members of the union. This conclusion follows from a consideration of all the relevant rules, and particularly rule 23(b) and rule 19(d). The language of rule 23(a) is confusing. Rule 23(b) is dealing with the same subject of levies. It is much more clearly expressed and I consider that it is more logical to give to the words in rule 23(a) "if they consider it necessary" the same meaning as the same words obviously have in rule 23(b), namely, that this phrase relates to the necessity for a levy and not to the necessity for a ballot. Similarly, rule 23(b) makes it clear that a secret ballot of members (and not officials) is intended. The reference in rule 23(a) to rule 19(d) makes it more logical to give a corresponding meaning to the word "members" in rule 23(a) than to conclude that this word refers only to members of the executive council.

It is to be noted also that rule 23(a) gives authority to impose a levy on all members and not on some members only, and all members are required to pay the levy. The levy in this case was imposed upon those who did not pay the voluntary contribution by 31st October, 1962, and it is obvious that no member who had paid his voluntary contribution, was required to pay the levy. For this reason, also, I consider that this particular levy, even if it had been otherwise properly imposed, was not within the authority given by rule 23(a). Perhaps steps could have been taken, as suggested in argument, to impose a general levy on all members and to arrange for a refund of voluntary contributions, or for them to be credited against payment of the levy. However, such steps were not taken and therefore there is no need to express any opinion on this possibility. As the matter stands, the levy was not imposed on all members.

I agree that this appeal should be dismissed with costs.

Tan Ah Tah F.J. concurred.

Appeal dismissed.

Solicitors: *David Marshall; L. A. J. Smith.*

BATCHA AMMAL v. PONNACHI

[F.C. (Thomson L.P., Barakbah C.J. (Malaya) and Tan Ah Tah F.J.) March 3, 1965]

[K.L. — Federal Court Civil Appeal No. 83 of 1964]

Practice and Procedure — Statement of claim — Amendment to — Incorporation of new cause of action.

Practice and Procedure — Further and better particulars.

A plaintiff is entitled to sue on any cause of action and should not be shut out from raising such cause of action.

The question of further and better particulars is essentially a matter of discretion and the object is to ensure that the defendant is informed with reasonable particularity as to the various matters which are alleged against him. In the present case the various transactions are identified in the particulars already supplied in accordance with the judge's order in the first place by the amount, in the second place by the date and in the third place, where this is appropriate by particulars of the appropriate invoice or cheque and accordingly the defendant has been given ample opportunity to enable her to defend and threfore that portion of the appeal should be dismissed.

FEDERAL COURT.

V. K. Palasuntharam for the appellant.

D. L. L. Pickard for the respondent.